



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

MEH:ddj  
Docket No: 6805-00  
5 December 2000

[REDACTED]

This is in reference to your application for correction of your deceased former spouse's naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

[REDACTED]

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your former spouse's naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. Your August 1993 divorce decree states that your former spouse "shall make the necessary election to cover Respondent as a former spouse under his Navy Retirement Survivor Benefit Plan (SBP)." He did not take the necessary action to elect former spouse coverage, and subsequently remarried. After the one year anniversary of his marriage his new spouse became the SBP beneficiary. Consequently, she is now the recipient of the SBP annuity. The Board is precluded from granting a request to correct military records when that correction would take away the benefit from another. Accordingly, your application has been denied. Your only recourse to enforce your divorce decree appears to be to pursue your claim in the Federal courts. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board.

Docket No. 6805-00

In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director